

# Chapter 3

## APPEALS OFFICER

**An ordinance  
which provides  
for the powers  
and duties of the  
Kanab City  
Appeals Officer.**

Adopted January 22, 2008

## CITY OF KANAB

### Uniform Zoning Ordinance

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#### **Section 3-1 Appointment, Term and Removal**

The Kanab City Appeals Officer shall be appointed by the legislative body for the term of three (3) years provided and until a successor has been appointed. The Appeals Officer may be removed for cause by a majority vote of the City Council following a public hearing.

#### **Section 3-2 Appeals**

Appeal may be made to the Appeals Officer of the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance. All appeals shall be made as follows:

1. The appeal shall be made within 10 days of the action or decision being appealed from by filing a notice of appeal with the Appeals Officer at the Kanab City Office. The applicant of the appeal shall pay a fee of \$150 when the notice of appeal is filed.
2. The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specify the grounds for appeal or failure to pay the appeal fee may be summarily dismissed by the Appeals Officer with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.
3. All papers constituting the record upon which the action appealed from was made shall be transmitted to the Appeals Officer.
4. The Appeals Officer shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the

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applicant at least seven days before the appeal hearing date. After hearing the appeal, the Appeals Officer may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.

5. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Appeals Officer. Said stay shall exist unless the Planning Commission or Zoning Administrator certifies to the Appeals Officer, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the Appeals Officer or by District Court on application, notice and due cause shown.

6. The decision of the Appeals Officer shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission or agency or to decide in favor of the appellant.

7. The City, or any person adversely affected by any decision of the Appeals Officer, may petition the district court for a review of the decision, provided the petition is filed with the Court within 30 days after the Appeals Officer's decision is final. In the petition, the appealing party may only allege that the Appeals Officer's decision was arbitrary, capricious, or illegal. The Appeals Officer may, after finding that it is in the best interest of the City to do so, stay its decision pending district court review.

### Section 3-3 Variances

1. Definition. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.

2. Variance Criteria. Unless otherwise provided in this Title, the Appeals Officer may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits. The Appeals Officer may grant a variance only if:

- a. Literal enforcement of the zoning ordinance would

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cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and

b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and

d. The granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and

e. The spirit of the zoning ordinance is observed and substantial justice done.

3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Appeals Officer may not find an unreasonable hardship unless the alleged hardship:

a. Is located on or associated with the property for which the variance is sought; and

b. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

4. In determining whether or not enforcement of the zoning ordinances would cause unreasonable hardship under this section, the Appeals Officer may not find unreasonable hardship if the hardship is self-imposed or economic.

5. In determining whether or not there are special circumstances attached to the property under this section, the Appeals Officer may find that special circumstances exist only if the special circumstances:

a. Relate to the hardship complained of; and

b. Deprive the property of privileges granted to other properties in the same district.

6. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

7. Variances, once granted, shall run with the land.

8. Use variances may not be granted by the Appeals Officer or any other body.

9. In granting a variance, the Appeals Officer may impose additional requirements on the applicant that will:

a. Mitigate any harmful affects of the variance; or

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- b. Serve the same or similar purpose of the standard or requirement that is waived or modified.

#### **Section 3-4 Meetings**

Meetings of the Kanab City Appeals Officer shall be held as the officer may determine. The Appeals Officer may administer oaths and compel the attendance of witnesses. All meetings of the Kanab City Appeals Officer shall be open to the public.

#### **Section 3-5 Minutes**

The Kanab City Appeals Officer shall keep minutes of meeting proceedings, and shall keep records of examinations and other official actions, all of which shall be filed with the Kanab City Clerk and shall be public record.

#### **Section 3-6 Action to be Taken**

Approval or disapproval, rejection, or modified approval of an application shall be based upon findings which shall be made a part of the official record.

#### **Section 3-7 Decision on Appeal**

In exercising the above-mentioned powers, the Kanab City Appeals Officer may in conformity with the provisions of this Ordinance reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such other, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

#### **Section 3-8 Rules**

The Kanab City Appeals Officer shall adopt rules for the regulation of procedure and the conduct of duties not inconsistent with the provisions of this Ordinance or of State law. Such rules, to become effective, shall be first approved by the City of Kanab.